



The Comptroller General
of the United States

Washington, D.C. 20548

Van Schick - PL

Decision

Matter of: SEC, Inc.
File: B-226978
Date: July 13, 1987

DIGEST

1. Purpose of requirement in Bid Protest Regulations that protester serve procuring agency with a copy of the protest within 24 hours of filing with the General Accounting Office (GAO) is to inform the agency promptly of the basis of protest and to enable it to prepare a report within the required 25 working days. When an agency has actual notice of the basis of protest and delivers its report in a timely fashion, GAO will not dismiss the protest in the absence of a showing that the agency was prejudiced by the late receipt.

2. When an agency regards proposals as essentially equal technically, price may become the determinative factor in making an award notwithstanding that in the evaluation criteria price was of less importance than technical considerations. A protester's mere disagreement with the determination that proposals are essentially equal does not itself render the evaluation objectionable.

DECISION

SEC, Inc. protests the award of a contract to the Forestry Association, Inc., under request for proposals (RFP) No. R3-87-10, issued by the Forest Service for a fixed-price timber resource inventory to be conducted in the Apache-Sitgreaves National Forest. SEC contends that its proposal was rated highest technically so it should have received the award. We deny the protest.

The RFP advised that award would be made to the offeror submitting the proposal determined most advantageous to the government based on price, technical proposal, personnel qualifications and experience. Proposals were to be evaluated and scored using the following criteria and relative weights:

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Technical Excellence	45%
Personnel Qualifications and Experience	35%
Previous Contract Experience	25%

Also, under the solicitation, offerors were cautioned that award could be made at other than the lowest price, but that award would not be made for technical capabilities that exceed those needed for the successful performance of the work.

The Forest Service received four proposals. The technical proposals were evaluated by the Technical Evaluation Panel (TEP) using the following scale:

<u>Adjective Rating</u>	<u>Numerical Equivalent</u>
Unsatisfactory	0
Poor	2
Fair	4
Good	6
Excellent	8
Outstanding	10

Based on the initial evaluation, three proposals, including SEC's, were rated "Excellent" while the fourth was rated "Poor." Written discussions were conducted with all four firms using comments provided by the TEP. Based on the offerors' responses to questions during negotiations, the TEP evaluated the proposals a second time resulting in no change in the ranking of the proposals.

The proposal rated "Poor" was excluded from the competitive range, and best and final offers were requested from the remaining firms. The original and best and final offers and numerical ratings were as follows:

	<u>Original Price</u>	<u>Best and Final</u>	<u>Numerical Ratings</u>
AAA Engineering	\$79,428	\$71,480	8.58
SEC	63,526.66	60,356.02	8.42
Forestry Assoc.	63,364.22	60,190.93	8.21

The contracting officer reviewed the TEP evaluation and agreed with the panel's conclusion that all three remaining proposals were essentially equal from a technical standpoint. Thus, award was made to the Forestry Association for \$60,190.93, since its proposal was the lowest-priced of the three.

As a preliminary matter, the Forest Service contends that the protest should be dismissed since SEC did not furnish a

copy of the protest to the contracting officer within 1-day after filing the protest with this Office as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1986). SEC, on the other hand, says that it sent a copy of the protest to the contracting officer and that it informed the contracting officer of the contents of the protest letter by telephone on the day the protest was filed.

We will not dismiss this protest for failure to timely serve the contracting officer. The purpose of the section 21.1(d) requirement is to inform procuring agencies promptly of the basis of protest and to enable them to prepare their reports within the 25 working days allotted by the Competition in Contracting Act of 1984. 31 U.S.C. § 3553(b)(2)(A) (Supp. III 1985); Southwest Marine of San Francisco, Inc., B-224508, Oct. 2, 1986, 86-2 CPD ¶ 388. In this case, the agency knew of the basis of protest through telephonic notice by the protester and received a copy of the protest through agency channels. Moreover, the agency delivered its report to our Office in a timely fashion. In the absence of a showing that the agency was prejudiced by the late receipt of a copy of the protest, dismissal is not appropriate. Id.

The protester argues that all three proposals in the competitive range could not have had the exact same numerical score and states that if its proposal was the highest scored, it should have been awarded the contract since the solicitation required numerical scoring and award on the basis of the highest rating.^{1/} According to the protester, the agency's use of broad adjectival ratings circumvented the emphasis placed on technical merit by the solicitation.

Given the solicitation's evaluation and award provisions, we have no basis upon which to object to the Forest Service's award decision. First, contrary to the protester's contention, the solicitation did not provide for award on the basis of the highest total point score, but instead stated that the offer representing the best combination of price, technical proposal, personnel qualifications and previous experience would be selected for award. Unless a solicitation specifically provides for award on the basis of highest total point scores, technical evaluators' point scores are merely aids for selection officials. See Wormald Fire Systems, B-224514, Feb. 20, 1987, 87-1 CPD ¶ 189. The extent to which source selection officials use the results of technical evaluations and make technical/price tradeoffs is governed only by the tests of rationality and consistency

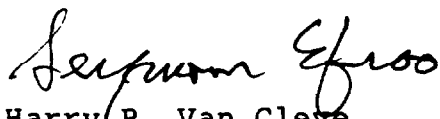
^{1/} The agency did not inform the protester of its score during pre-protest discussions.

with the evaluation criteria established in the RFP. Mantech Services Corp., B-222462, Aug. 5, 1986, 86-2 CPD ¶ 149. Therefore, even if technical factors are weighted heavily, price may become the determinative factor where selection officials reasonably determine that proposals are essentially equal. Id.

Moreover, SEC's contention that it is inconceivable that the proposals were equal is misplaced. Exact equality was not necessary. Although SEC's numerical score was higher than that of the Forestry Association, it did not receive the highest score. In any event, the difference among the scores was slight. In such cases, it is only necessary that the differences in technical merit between the proposals be reasonably viewed by the contracting activity as relatively insignificant because the closeness of technical scores makes price the critical determinant in selecting the awardee. Alturdyne, B-214103.2, Oct. 2, 1984, 84-2 CPD ¶ 379.

Our review of the record indicates no basis to object to the agency's determination here that the technical proposals were essentially equal. Although SEC disagrees, the protester does not attempt to show how its proposal was superior. SEC's mere disagreement with the Forest Service's determination does not render the evaluation unreasonable. Associations for the Education of the Deaf, Inc., B-220868, Mar. 5, 1986, 86-1 CPD ¶ 220. Since the proposals were determined to be essentially equal, it was proper and consistent with the RFP evaluation criteria for the agency to award the contract to the Forestry Association on the basis of its lower price.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel